

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) **MAIL STOP AF**
Johan Elgebrant et al.)
Application No.: 10/574,959) Group Art Unit: 3782
Filed: April 7, 2006) Examiner: Latrice Chenell Byrd
For: PACKAGING CONTAINER AND) Confirmation No.: 8429
METHOD OF PRODUCING A)
PACKAGING CONTAINER)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

In the present application, three independent claims-- Claims 1, 19 and 21, are currently pending. Claim 1 is directed to a packaging container having a first portion formed of a first material or material combination and a second portion formed of a second material or material combination different from the first material or material combination. The recited first portion includes a free edge defining a pouring opening, and the first portion is further provided with a tearing line extending essentially from the pouring opening towards an interface between the first portion and the second portion and essentially along an entirety of said interface. Claim 19 recites a packaging container in which the first portion includes a tearing line extending essentially from an interface to a part of the first portion which is exposed as the free edge when a lid is at least partially removed, the tearing line also extending essentially along an entirety of the interface. In the Claim 21 packaging

container, a top and a sleeve are connected at an interface between the top and the sleeve, and the top further includes a tearing line extending essentially from the weakening line to the interface, the tearing line also extending essentially along an entirety of the interface.

In the most recent Official Action, each of independent Claims 1, 19 and 21 were rejected as being unpatentable based on the disclosures in U.S. Patent No. 4,934,585, hereinafter Reil, and JP9-290852, hereinafter the Japanese reference.

In particular, the Official Action correctly notes that the packaging container disclosed in Reil does not include a tearing line as recited in Claim 1, 19, or 21. The Official Action goes on to take the position that a prior art disclosure of a tearing line which extends essentially from a pouring opening towards an interface between a first portion and a second portion and essentially along an entirety of the interface would cure the clear deficiencies in Reil, and that furthermore, the Japanese reference discloses such a tearing line in its Fig. 5 embodiment. However, for the reasons discussed below, the Japanese reference does not disclose such a tearing line, and thus, the Examiner has failed to set forth a *prima facie* case of obviousness of the packaging containers recited in independent Claims 1, 19 and 21.

While Fig. 5 clearly does not explicitly show such a tearing line, the Examiner explained to the undersigned, during an interview following issuance of the final rejection, that she believes Fig. 5 of the Japanese reference implicitly discloses such a tearing line. In particular, the Examiner explained that she believes in the Fig. 5 embodiment, a tearing line extends from an opening (at the top of the tube 5 of the container illustrated in Fig. 5), and then along an interface between two parts (around the base of tube 5 and passing through elements 7a and 7b). The Examiner

explained that the basis for this belief, despite the lack of an illustration of any tearing line along the base of tube 5 in Fig. 5, is that a dashed line, representing a tearing line, is illustrated in the embodiments of Figs. 2, 3, 4 and 6 along the base of tube 5, and that this dashed line is labelled with elements 7a and 7b. The Examiner therefore concluded that a tearing line must also exist in the Fig. 5 embodiment along the base of tube 5. The Examiner was unable to provide support for this conclusion in the machine translation of the Japanese specification into English. Following this interview, Applicants obtained a human translation into English of the Japanese specification. A copy of the human translation was provided with the October 18, 2011 request for reconsideration filed by Applicants in this application.

As discussed in lines 11-16 on page 12 of the human translation, in one of the disclosed embodiments, each of the weakened lines 7 is formed to be short in length, and the weakened lines 7 and the weakened line 8a and 8b can be formed continuously in the same direction, so that the tearing operation can be completed in a single direction. This clearly refers to the Fig. 5 embodiment, the tearing operation of which is illustrated in Fig. 8, and in which it is apparent that, although the number 7 is not illustrated on Fig. 5, the weakened line 7 is composed of the two lines which extend down the tube 5, consistent with the above-noted portion of the human translation. No portion of the weakened line 7 is described or illustrated as extending around the base of the tube 5 in this embodiment.

The Advisory Action dated October 28, 2011, states that it is clear that the weakened line 7 in the Fig. 5 embodiment is essentially the same as that of the other embodiments with the difference that that weakened line 7 is at the base of the tube 5 instead of the upper wall 13. Respectfully, this is clearly not the case, as a

weakened line is illustrated at the base of the tube 5 in Figs. 1, 2 and 7, but not Fig. 5. The Advisory Action further states that it is clear from page 9 of the human translation that, in the Fig. 5 embodiment, the weakened lines 8a, 8b extend from the top of the tube downward, with the weakened line 7 extending around the tube 5. Applicants respectfully submit that, as discussed in detail below, this is not what is disclosed on page 9 of the human translation.

As discussed in lines 29-31 on page 9 of the human translation, elements 8a and 8b are weakened lines on outer tube 11 which join to end parts 7a, 7b of weakened line 7. This weakened line 7 is provided in different locations in the various embodiments. In particular, as discussed in lines 13-16 on page 9, the weakened line 7 is formed at the base part 10 of the pouring tube 5 in the embodiments of Figs. 1, 2 and 7, while as discussed in lines 17-18 on page 9, the weakened line 7 is formed on the upper wall 13. Lines 18-19 explain that, in contrast to the other embodiments, the Fig. 5 embodiment includes the weakened line 7 on the pouring tube. While the weakened line 7 is not labelled in Fig. 5, it is clear from the above-discussed disclosure in lines 11-16 on page 12 that the weakened line 7 in this embodiment is composed of the two lines which extend down the tube 5 and intersect weakened lines 8a and 8b at the ends 7a and 7b of the weakened lines 7.

In light of the foregoing discussion, it is quite clear that the Japanese reference's Fig. 5/8 embodiment does not include a weakened line extending around the base of the tube 5. Thus, this embodiment does not include a tearing line which extends essentially from a pouring opening towards an interface between a first portion and a second portion and essentially along an entirety of the interface. It is

also quite clear that none of the other embodiments in the Japanese reference disclose such a tearing line.

It is furthermore clear that, because the Japanese reference does not disclose such a tearing line, the Examiner has failed to set forth a *prima facie* case that the Japanese reference cures the above-noted deficiencies in Reil, i.e., the Examiner has failed to set forth a *prima facie* case of obviousness of the packaging containers recited in Claims 1, 19 and 21. Therefore, the outstanding rejection under 35 U.S.C. § 103(a) is improper and should be withdrawn.

Respectfully submitted,

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